IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Panna Ram v. Board of Revenue & Ors.

S.B.CIVIL WRIT PETITION NO.920/1995
under Article 226 of the Constitution of India.

Date of Order : 24th May, 2005

P R E S E N T
HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. S.G.Ojha, for the petitioner.
Mr. B.L.Tiwari, Addl.Govt.Advocate.
Mr. Sudhir Sharma, for the respondent No.4.

BY THE COURT :

This petition for writ is preferred by the petitioner to quash the order dated 18.10.1985 passed by Assistant Commissioner Colonisation, Indira Gandhi Canal Project, Chhattargarh; the order dated 18.6.1990 passed by Additional Commissioner Colonisation-cum-Revenue Appellate Authority, Bikaner, and the order dated 21.3.1995 passed by Board of Revenue for Rajasthan, Ajmer.

The facts in brief required to be noticed are that an allotment was made in favour of the petitioner by Assistant Commissioner Colonisation, Chhattargarh pertaining to the land measuring 8 bighas and 5 biswas by an order dated 20.1.1979. The command land occupied by the petitioner was changed as uncommand land by the

Department of Colonisation and this created shortage of land with the petitioner. The petitioner, therefore, was considered entitled for allotment of an additional land measuring 3 bighas and 18 biswas. The land so measured was allotted to the petitioner by a order dated 14.6.1984 passed by Assistant Commissioner Colonisation, Chhattargarh District Bikaner.

One Shri Khetaram, father of respondent No.4 Shri Hiraram made a complaint on 18.10.1985 to the Assistant Commissioner Colonisation with regard to allotment of land made in favour of the petitioner. On basis of aforesaid complaint the Assistant Commissioner Colonisation by an order dated 18.10.1985 cancelled the allotment of land made in favour of the petitioner. The Assistant Commissioner Colonisation cancelled the allotment made in favour of the petitioner on the count that the petitioner concealed certain material facts while getting the land allotted in his favour. The Assistant Commissioner Colonisation held that the petitioner concealed the facts pertaining to his share in the land owned by his father.

The petitioner being aggrieved by order passed by Assistant Commissioner Colonisation dated 18.10.1985 preferred an appeal before the Revenue Appellate Authority, Bikaner. The petitioner while giving challenge to the order dated 18.10.1985

contended before the Revenue Appellate Authority that (a)the 24 bighas land was held by the petitioner as temporary cultivator, which was recorded as Government land there, therefore, this land could not be considered as to be the petitioner on the day of allotment to the petitioner; (b)the share of the petitioner in the self acquired property of the father cannot be considered as to be his share in the life time of the father; and (c)the position of the lands and lord was to be considered on the day of allotment. The Assistant Commissioner Colonisation while passing the order Annexure 3 has not found that the allegation in the complaint were true on the date of the allotment i.e. dated 20.1.1979.

The appellate authority by its order dated 18.6.1990 rejected the appeal preferred by the petitioner. The appellate authority while deciding appeal though recorded the contentions made by counsel for the petitioner but no finding was given by him. The appeal was dismissed by totally a non-speaking order by the appellate authority.

The petitioner being aggrieved by order passed by the Revenue Appellate Authority preferred a revision petition before the Board of Revenue under sub-rule(2) of Rule 23 of the Colony Area Allotment Rules, 1975 read with Section 83 of the Land Revenue Act, 1956. The Board of Revenue by its order dated

21.3.1995 dismissed the revision petition preferred by the petitioner.

The petitioner contended before the Board of Revenue that he never concealed any fact while getting the land allotted under the orders dated 20.1.1979 and 14.6.1984. He further averred that his father was having self acquired property and as such during the life time of his father he could not have claimed any share in the land owned by his father. The petitioner, therefore, challenged the order of cancellation of allotment and alleged that the Assistant Commissioner Colonisation as well as Revenue Appellate Authority erred while taking into consideration self acquired land owned by his father. The Board of Revenue by judgment dated 18.6.1990 without appreciating the contention raised by the petitioner held that the petitioner got the land allotted by concealing important fact and, therefore, affirmed the orders passed by the Assistant Commissioner Colonisation and the Revenue Appellate Authority.

This writ petition is preferred by the petitioner being aggrieved by the orders passed by the Board of Revenue, Revenue Appellate Authority and the Assistant Commissioner Colonisation referred above.

I have heard counsel for the parties.

The contention of the counsel for the petitioner is that the Assistant Commissioner Colonisation acted upon a complaint made by father of the respondent No.4 who was having no interest in the land. It is contended by the counsel for the petitioner that at the time of allotment of land made in favour of the petitioner his father was alive and, therefore, the petitioner could not have claimed for his share in that property. It is asserted by the petitioner that his father was not having any ancestral property and whatever land occupied by him was self acquired.

From perusal of record of the case it is apparent that the petitioner mentioned all relevant facts before the allotting authority and at the time of allotment of land father of the petitioner was alive, as such there was no occasion for him to mention anything about his share in the self acquired property of his father. It is pertinent to note that the complaint was made by father of the respondent No.4 in the year 1985 i.e. after death of father of the petitioner. The Assistant Commissioner Colonisation, Revenue Appellate Authority and the Board of Revenue all failed to appreciate that on the date the allotment was made in favour of the petitioner, the petitioner was not at all in position to make any claim with regard to his share in self acquired land owned by his father. The courts below

were to examine the position as existing on the date of allotment of land.

In view of whatever discussed above, I am is of considered opinion that the courts below erred while cancelling the allotment of land made in favour of the petitioner by allotting authority.

Consequently, the writ petition is allowed and the orders impugned dated 18.10.1985 passed by Assistant Commissioner Colonisation, Indira Gandhi Canal Project, Chhattargarh; dated 18.6.1990 passed by Additional Commissioner Colonisation-cum-Revenue Appellate Authority, Bikaner, and dated 21.3.1995 passed by Board of Revenue for Rajasthan, Ajmer are hereby quashed and the orders dated 20.1.1979 and 14.6.1984 passed by the Assistant Commissioner Colonisation are hereby restored.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.